

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA for the use
and benefit of J. SCADUTO & SON, INC.,

08 CV 01885 (EGL)

Plaintiff,

ANSWER

-against-

LIBERTY MUTUAL INSURANCE CO. and
AGENCY CONSTRUCTION CORP.,

Defendants.

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Defendant, Liberty Mutual Insurance Company (Liberty), by counsel, serves this Answer to the Amended Complaint (the Complaint) of plaintiff, United States of America for the use and benefit of J. Scaduto & Son, Inc. (Scaduto).

1. Liberty denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.
2. Liberty admits the allegations in Paragraph 2 of the Complaint.
3. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Complaint.
4. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions in Paragraph 4 of the Complaint.
5. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions in Paragraph 5 of the Complaint.
6. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions in Paragraph 6 of the Complaint.

7. Upon information and belief, Liberty admits the allegations in Paragraph 7 of the Complaint, except that Liberty lacks knowledge or information sufficient to form a belief as to whether the copy of the Contract between defendant, Agency Construction Corp. (Agency) and the United States Postal Service (the Contract) attached to the Complaint is a true and correct copy.

8. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations and in Paragraph 8 of the Complaint, except admits that it issued labor and material payment bond number 015-025-053 (the Bond), and respectfully refers the Court to the Bond for its express terms and conditions.

9. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations and legal conclusions in Paragraph 9 of the Complaint.

10. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint.

11. Liberty lacks knowledge of information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint.

12. Liberty denies the allegations in Paragraph 12 of the Complaint.

13. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint.

14. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint.

15. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint.

16. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint.

17. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint.

18. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint.

20. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

21. Upon information and belief, Liberty denies the allegations in Paragraph 21 of the Complaint.

22. Upon information and belief, Liberty denies the allegations in Paragraph 22 of the Complaint.

23. Liberty lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 23 of the Complaint, and respectfully refers the Court to the subcontract and Contract for their express terms and conditions.

24. Liberty denies the allegations in Paragraph 24 of the Complaint.

25. Liberty lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 25 of the Complaint.

26. Liberty lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 26 of the Complaint.

27. Liberty denies the allegations in Paragraph 27 of the Complaint.

28. Liberty denies the allegations in Paragraph 28 of the Complaint.

29. In response to Paragraph 29 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 28 of this Answer.

30. Upon information and belief, Liberty denies the allegations in Paragraph 30 of the Complaint.

31. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint.

32. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint.

32 [sic]. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 [sic] of the Complaint.

33. Liberty denies the allegations in Paragraph 33 of the Complaint.

34. Liberty denies the allegations in Paragraph 34 of the Complaint.

35. In response to Paragraph 35 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 34 of this Answer.

36. Upon information and belief, Liberty denies the allegations in Paragraph 36 of the Complaint.

37. Upon information and belief, Liberty denies the allegations in Paragraph 37 of the Complaint.

38. Upon information and belief, Liberty denies the allegations in Paragraph 38 of the Complaint.

39. Upon information and belief, Liberty denies the allegations in Paragraph 39 of the Complaint.

40. In response to Paragraph 40 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 39 of this Answer.

41. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint.

42. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint.

43. Upon information and belief, Liberty denies the allegations in Paragraph 43 of the Complaint.

44. In response to Paragraph 44 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 43 of this Answer.

45. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint.

46. Liberty lacks knowledge of information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint.

47. Liberty denies the allegations in Paragraph 47 of the Complaint.

48. In response to Paragraph 48 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 47 of this Answer.

49. Liberty lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint.

50. Upon information and belief, Liberty denies the allegations in Paragraph 50 of the Complaint.

51. Upon information and belief, Liberty denies the allegations in Paragraph 51 of the Complaint.

52. In response to Paragraph 52 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 51 of this Answer.

53. Upon information and belief, Liberty denies the allegations in Paragraph 53 of the Complaint.

54. Liberty denies the allegations in Paragraph 54 of the Complaint and respectfully refers the Court to the Bond for its express terms and conditions.

55. Liberty denies the allegations in Paragraph 55 of the Complaint.

56. Liberty denies the allegations in Paragraph 56 of the Complaint.

57. Liberty denies the allegations in Paragraph 57 of the Complaint.

58. In response to Paragraph 58 of the Complaint, Liberty repeats and realleges each of its responses in Paragraphs 1 through 57 of this Answer.

59. Liberty denies the allegations in Paragraph 59 of the Complaint.

60. Liberty denies the allegations in Paragraph 60 of the Complaint.

61. Liberty denies the allegations in Paragraph 61 of the Complaint.

62. Liberty denies the allegations in Paragraph 62 of the Complaint.

63. Liberty denies the allegations in Paragraph 63 of the Complaint.

64. Liberty lacks knowledge of information sufficient to form a belief as to the allegations in Paragraph 64 of the Complaint.

65. Liberty denies the allegations in Paragraph 65 of the Complaint.

66. Liberty denies the allegations in Paragraph 66 of the Complaint.

67. Liberty denies the allegations in Paragraph 67 of the Complaint.

68. Liberty denies the allegations in Paragraph 68 of the Complaint.

FIRST DEFENSE

69. The Complaint fails to state a cause of action against Liberty upon which relief can be granted.

SECOND DEFENSE

70. Upon information and belief, Scaduto is estopped from asserting the claims asserted in the Complaint.

THIRD DEFENSE

71. Upon information and belief, Scaduto has waived the claims asserted in the Complaint, including, but not limited to, by failing to comply with conditions precedent under the Subcontract, Bond, controlling law and by its own breaches of the Subcontract.

FOURTH DEFENSE

72. Upon information and belief, Scaduto has not been damaged in the amount, or to the extent, alleged in the Complaint, if at all.

FIFTH DEFENSE

73. Upon information and belief, Scaduto has failed to mitigate its damages, if any.

SIXTH DEFENSE

74. Liberty asserts, on its own behalf, all of the defenses available to its principal, Agency.

SEVENTH DEFENSE

75. Upon information and belief, Liberty is entitled to offset against any amounts owed by Scaduto to Agency as a result of Scaduto's breach of the Subcontract, and back charges to Scaduto by Agency for costs incurred by Agency to complete and/or correct Scaduto's incomplete and/or defective work which exceed the Subcontract balance.

EIGHTH DEFENSE

76. Upon information and belief, Scaduto's claims are barred, in whole or in part, based on Scaduto's breach of the Subcontract.

REQUEST FOR RELIEF

Based on the above, Liberty requests that the Complaint be dismissed in its entirety and that Liberty be awarded whatever additional relief the Court deems appropriate, including costs of court and counsel fees.

Dated: Garden City, New York
June 23, 2008

LIBERTY MUTUAL
INSURANCE COMPANY

By: Carolyn K. Fiorello
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